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**SUBSTITUTE SENATE BILL 5938**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Government Operations & Elections (originally sponsored by Senators Haugen, Swecker, Fairley, Roach, Shin and Rasmussen)

READ FIRST TIME 02/28/07.

1       AN ACT Relating to human remains; adding new sections to chapter  
2 68.60 RCW; adding a new section to chapter 27.44 RCW; creating a new  
3 section; prescribing penalties; and providing an expiration date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5       NEW SECTION. **Sec. 1.** A new section is added to chapter 68.60 RCW  
6 to read as follows:

7       (1) Apart from any criminal prosecution, any person with an  
8 interest in a grave or cemetery that has been disturbed shall have a  
9 civil action to secure an injunction, damages, or other appropriate  
10 relief against any person who is alleged to have violated RCW  
11 68.60.050. The action must be brought within two years of the  
12 discovery of the violation by the plaintiff. The action may be filed  
13 in the superior court of the county in which the grave or cemetery is  
14 located, or in the superior court of the county within which the  
15 defendant resides.

16       (2) Any conviction pursuant to RCW 68.60.050 shall be prima facie  
17 evidence in an action brought under this section.

18       (3) If the plaintiff prevails:

1 (a) The court may award reasonable attorneys' fees to the  
2 plaintiff;

3 (b) The court may grant injunctive or such other equitable relief  
4 as is appropriate, including forfeiture of any human remains or  
5 property acquired or equipment used in the violation. The court shall  
6 order the disposition of any items forfeited as the court sees fit,  
7 including the reinterment of human remains;

8 (c) The plaintiff shall recover imputed damages of five hundred  
9 dollars or actual damages, whichever is greater. Actual damages  
10 include special and general damages, which include damages for  
11 emotional distress;

12 (d) The plaintiff may recover punitive damages upon proof that the  
13 violation was willful. Punitive damages may be recovered without proof  
14 of actual damages. All punitive damages shall be paid by the defendant  
15 to the department of archaeology and historic preservation for the  
16 purposes of preserving non-Indian graves and cemeteries and to cover  
17 the cost of reinterment expenses by the department; and

18 (e) An award of imputed or punitive damages may be made only once  
19 for a particular violation by a particular person, but shall not  
20 preclude the award of such damages based on violations by other persons  
21 or on other violations.

22 (4) If the defendant prevails, the court may award reasonable  
23 attorneys' fees to the defendant.

24 NEW SECTION. **Sec. 2.** A new section is added to chapter 27.44 RCW  
25 to read as follows:

26 (1) Any person who discovers human remains, graves, or a cemetery  
27 shall immediately report the discovery to law enforcement officials.  
28 This includes inadvertent discovery through any activity, including  
29 construction, mining, logging, or agricultural activity.

30 (2) The law enforcement officials, medical examiner, or county  
31 coroner shall determine if the human remains are evidence of a crime,  
32 and whether the discovery contains Indian or non-Indian human remains  
33 or graves. Within forty-eight hours of these determinations, the law  
34 enforcement officials, medical examiner, or the county coroner shall  
35 report the discovery to the department of archaeology and historic  
36 preservation.

1 (3) If the discovery contains native Indian human remains, graves,  
2 or cemeteries, the medical examiner or county coroner shall promptly  
3 notify the affected Indian tribes of the discovery.

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 68.60 RCW  
5 to read as follows:

6 (1) Any person who discovers human remains, graves, or a cemetery  
7 shall immediately report the discovery to law enforcement officials.  
8 This includes inadvertent discovery through any activity, including  
9 construction, mining, logging, or agricultural activity.

10 (2) The law enforcement officials, medical examiner, or county  
11 coroner shall determine if the human remains are evidence of a crime,  
12 and whether the discovery contains Indian or non-Indian human remains  
13 or graves. Within forty-eight hours of these determinations, the law  
14 enforcement officials, medical examiner, or the county coroner shall  
15 report the discovery to the department of archaeology and historic  
16 preservation.

17 (3) If the discovery contains native Indian human remains, graves,  
18 or cemeteries, the medical examiner or county coroner shall promptly  
19 notify the affected Indian tribes of the discovery.

20 NEW SECTION. **Sec. 4.** Any person who intentionally fails to report  
21 the discovery of human remains, graves, or a cemetery under section 2  
22 or 3 of this act is guilty of a misdemeanor.

23 NEW SECTION. **Sec. 5.** A joint select legislative task force on  
24 human remains is established, with members as provided in this section.  
25 The task force shall consult with all interested Indian tribes  
26 throughout the state.

27 (1) The task force shall include four members of the Washington  
28 state legislature, one from each caucus in the senate and the house of  
29 representatives as designated by each caucus. The task force shall  
30 also include the director, or his or her designee, of the department of  
31 archaeology and historic preservation, the department of licensing, and  
32 the governor's office of Indian affairs.

33 (2) The governor shall appoint a chair to the task force who has  
34 experience in intergovernmental relations with the Indian tribes of  
35 Washington.

1           (3) The task force shall study the issues surrounding the discovery  
2 of human remains, both Indian and non-Indian. The task force shall  
3 examine the legal processes used to dedicate graves and human remains  
4 as cemeteries, the legal process of decertifying a cemetery, and the  
5 legal process to permit the removal of human remains from property.  
6 The task force shall make findings and recommendations on how to ensure  
7 that all discoveries of human remains are reported, and how to ensure  
8 that all human remains, graves, and cemeteries are treated equally and  
9 with the respect due to a finite, irreplaceable cultural resource of  
10 the people of Washington.

11           (4) Legislative members of the task force must be reimbursed for  
12 travel expenses in accordance with RCW 44.04.120. Nonlegislative  
13 members shall be reimbursed for travel expenses as provided in RCW  
14 43.03.050 and 43.03.060.

15           (5) Staff support for the task force must be provided by senate  
16 committee services.

17           (6) The task force shall report its findings and recommendations to  
18 the legislature by December 2007.

19           (7) This section expires December 31, 2007.

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